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Audley A. Clamporcero
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

In re Application of
HURTA, Wenzel Franz et al.
Application No.: 09/424,440
PCT No.: PCT/US98/10864
Int. Filing Date: 28 May 1998
Priority Date: 06 June 1997
Attorney Docket No.: CRD0461
For: GLASS CORE GUIDEWIRE COMPATIBLE
WITH MAGNETIC RESONANCE HAVING
REINFORCING FIBERS

DECISION ON

PETITIONS

UNDER 37 CFR 1.181

AND 37 CFR 1.47(a)

This decision is in response to applicants' facsimile transmission of 04 March 2003. It has been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 28 May 1998, applicants filed international application PCT/US98/10864. A demand for international preliminary examination was timely filed on 28 December 1998. The deadline for entry into the national stage in the United States was thirty months from the priority date, 06 December 1999.

On 23 November 1999, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, *inter alia*, the basic national fee.

On 19 January 2000, the Office mailed both a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required and a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917).

On 28 February 2000, applicants submitted a Petition Under 37 CFR 1.47(a).

On 11 May 2000, the Office mailed Decision On Petition Under 27 CFR 1.47(a), dismissing applicants' petition without prejudice.

On 04 March 2003, applicants submitted the instant petition under 37 CFR 1.181 and a renewed petition under 37 CFR 1.47(a).

DISCUSSION

MPEP at section 503 states, in part:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

The 09 June 2000 postcard receipt lists a renewed petition with three attachments. The postcard receipt is date stamped and indicates the serial number and the title of the application.

The postcard receipt is adequate evidence that the petition was received on 09 June 2000.

The petition states that the attached petition is a true copy of the 09 June 2000 submission and the statement is signed by someone registered to practice before the office.

The petition is accepted as having a receipt date of 09 June 2000.

09 June 2000 Petition

Applicants assert that the 28 February 2000 petition:

was sent by fax from the Phoenix International Airport at 2:44pm local time on February 22, 2000. A copy of the receipt from the fax service is attached indicating the correct date and time of transmission. Accordingly, the internal date and time settings of the fax machine, which the undersigned did not see or control, were incorrect.

The report indicates that three pages were faxed, but it does not identify what was faxed. There is no indication that the three pages that were faxed constituted the 28 February 2000 petition. Although applicants presented a facsimile transmission receipt for the petition, the petition appears to have been mailed to USPTO. The present petition does not contain a statement from the person who mailed the petition.

Applicants' request for a refund of the fee for a one month extension of time is refused.

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1), (3) and (4) were previously satisfied.

Item (2) has not been satisfied. The memorandum to Mr. de Tiege directing him to have the inventors review the application before signing the declaration does not establish that the inventors were presented with the application. In this scenario, a statement from Mr. de Tiege or someone else with first hand knowledge of the facts would be required.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

Applicants' petition to refund the fee for the one month extension of time is DISMISSED without prejudice.

The renewed Petition Under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Applicants are advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.



Leonard E. Smith
PCT Legal Examiner
PCT Legal Administration



Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459